

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Roofer Certificate  
of Exemption of Timothy Gerard Harris,  
d/b/a Tim Harris Construction,  
Certificate of Exemption No. 20588938

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a prehearing conference before Administrative Law Judge Eric L. Lipman on March 28, 2007, at the Minneapolis offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by, or on behalf of, Timothy Gerard Harris, d/b/a Tim Harris Construction (Respondent). Following a submission from the Department on March 28, 2007, the hearing record closed.

**STATEMENT OF THE ISSUES**

1. Whether the Respondent, by his breach of contract, was in violation of Minn. Stat. § 326.91, subd. 1(4) (2006)?
2. Whether Respondent, by contracting for work that exceeded the \$15,000 limit of his certificate of exemption, violated Minn. Stat. §§ 326.84 subds. 1 and 1b and 326.842 (2006)?
3. Whether Respondent, by failing to disclose on his certificate of exemption application his criminal convictions, engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subds. 1(1) and (2) (2006) and Minn. R. 2891.0040 subp. 1.A (2005)?
4. Whether Respondent, by contracting with Minnesota homeowners to install gutters and siding, which are beyond the scope of his roofer's certificate of exemption, engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subd.1(2) (2006)?
5. Whether Respondent, by failing to notify the Department of his change in business address within 15 days of the change, violated Minn. Stat. § 326.91, subd. 1(5) (2006) and Minn. R. 2891.0010 (2005)?

6. Whether Respondent, by failing to complete the Christenson and White contracts or return the down payments, has been shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2006)?

7. Whether Respondent engaged in unlicensed residential building contractor, remodeler and roofer activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.842 (2006)?

8. Whether Respondent, by exceeding the scope of his roofer's certificate of exemption, engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) (2006)?

9. Whether Respondent is in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4) (2006)?

10. Whether Respondent, by failing to use the proceeds received from Mr. Hoskins to purchase the necessary materials for the project, demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) (2006)?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On February 6, 2007, a Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause and Statement of Charges in this matter was mailed to the following address: 12961 Balsam Lane NE, Dayton, Minnesota 55327.<sup>1</sup> The Notice of and Order for Hearing indicated that a Prehearing Conference would be held in this matter on March 28, 2007.<sup>2</sup>

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

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Pursuant to Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent violated

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<sup>1</sup> See, Affidavit of Jean-Anne Gates (March 29, 2007).

<sup>2</sup> Notice and Order for Hearing, at 1.

any law, rule or order related to the duties and responsibilities entrusted to the Commissioner.<sup>3</sup>

3. No one appeared at the February 15, 2007, prehearing conference on behalf of Respondent. No prehearing request was made for a continuance, nor did anyone file a Notice of Appearance on behalf of Respondent.

4. The Notice and Order for Hearing alleges that:

- (a) Respondent currently holds a Roofer Certificate of Exemption, No. 20588938.
- (b) In November 2006, the Department received a complaint from Rogers, Minnesota, homeowner LaNae Christenson. The Department's investigation revealed that Ms. Christenson entered into a contract with Respondent to replace her gutters and paid him \$610.00. No work, however, was performed. Respondent also failed to return the \$610.00 down payment.
- (c) Ms. Christenson further advised the Department that Respondent had entered into a \$20,000 contract with Ms. Christenson's neighbors, Brian and Patty White, to replace their roof and siding and had received \$11,000 for the project. No work was performed on this project.
- (d) The Department's investigation further revealed that Respondent had been convicted of misdemeanor assault and misdemeanor disturbing the peace in May 2006. Respondent had failed to disclose the convictions on his certificate of exemption application. On July 7, 2006, the same day Respondent submitted the application, he was convicted for a second misdemeanor charge.
- (e) In January 2007, the Department received a complaint from Dayton, Minnesota, homeowner Scott Hoskins. The Department's investigation revealed that Mr. Hoskins hired Respondent to make numerous repairs to Mr. Hoskins' home, which was damaged by hail. The contract called for Harris to re-roof the house, garage and two sheds, remove and replace existing windows, remove and replace fascia around the entire house, and pressure wash and paint the house and the front of the garage. The cost of the contract was to be the total of the insurance proceeds paid to Mr. Hoskins.

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<sup>3</sup> Notice and Order for Hearing, at 6, ¶ 1 and 7, ¶ 10.

- (f) Between October and November 2006, Mr. Hoskins paid Respondent \$5,060, of which \$4,340 was to be used for purchasing roofing materials. Respondent failed to properly complete the Hoskins project. Defects include, but are not limited to, an improperly installed window, incomplete painting, and failure to complete the re-roofing.
- (g) Respondent left the Hoskins roof half-finished and exposed to the elements for approximately one month. When contacted by Mr. Hoskins, Respondent informed them that he had no money and could not finish the job. Due to the defects in the work performed, the City of Dayton issued a correction notice dated December 26, 2006. Respondent has failed to comply with the correction notice.

5. The allegations contained in the Notice and Order for Hearing are deemed proven and are incorporated into these Findings by reference.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 326.91, and Executive Order 193.<sup>4</sup>

2. Respondent received due, proper and timely notice of the charges against him and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled prehearing conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set forth in that Notice of and Order for Hearing and Prehearing Conference or other pleadings may be taken as true or deemed proved without further evidence.

5. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by contracting for work that exceeded the \$15,000 limit of his

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<sup>4</sup> See, State of Minnesota Department of Administration Reorganization Order No. 193 (April 4, 2005) ("The responsibilities of the Department of Commerce as set forth in Minnesota Statutes 2004, sections 326.83 through 326.992, and Chapter 327A in relation to Residential Contractors and Remodelers are transferred to the Department of Labor and Industry").

certificate of exemption, violated Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842 (2006).

6. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by failing to disclose on his certificate of exemption application his criminal convictions, engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subds. 1(1) and (2) (2006) and Minn. R. 2891.0040, subp. 1.A (2005).

7. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by contracting with Minnesota homeowners to install gutters and siding, which are beyond the scope of his roofer's certificate of exemption, engaged in a fraudulent, deceptive, and dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) (2006).

8. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by failing to notify the Department of his change in business address within 15 days of the change, violated Minn. Stat. § 326.91, subd. 1(5) (2006) and Minn. R. 2891.0010 (2005).

9. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by failing to complete the Christenson and White contracts or return the down payments, has been shown to be incompetent, untrustworthy, or financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (2006).

10. Based upon the facts set out in the Notice of and Order for Hearing, Respondent engaged in unlicensed residential building contractor, remodeler and roofer activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b, and 326.842 (2006).

11. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by exceeding the scope of his roofer's certificate of exemption, engaged in a fraudulent, deceptive, or dishonest practice in violation of Minn. Stat. § 326.91, subd. 1(2) (2006).

12. Based upon the facts set out in the Notice of and Order for Hearing, Respondent is in breach of contract in violation of Minn. Stat. § 326.91, subd. 1(4) (2006).

13. Based upon the facts set out in the Notice of and Order for Hearing, Respondent, by failing to use the proceeds received from Mr. Hoskins to purchase the necessary materials for the project, demonstrated financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(6) (2006).

14. Minn. Stat. § 326.91, subds. 1(5) and 4 empowers the Commissioner to take disciplinary action against the Respondent, for his violations of agency orders, state statute and state rules.

15. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

Based upon these Conclusions, the Administrative Law Judge recommends that disciplinary action be taken against Timothy Gerard Harris, d/b/a Tim Harris Construction, Certificate of Exemption No. 20588938.

Dated: April 10, 2007

s/Eric L. Lipman  
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ERIC L. LIPMAN  
Administrative Law Judge

Reported: Taped, One tape  
No transcript prepared

### **NOTICE**

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155-4307, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subdivision 2a. In such a case, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.